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ABSTRACT

This booklet provides parents of children with disabilities with information on procedural safeguards guaranteed in special education under the Individuals with Disabilities Education Act 1997 (IDEA). Topics covered include: (1) required notice of procedural safeguards; (2) parent participation; (3) prior written notice; (4) parental consent; (5) student records; (6) evaluation procedures; (7) least restrictive environment requirement; (8) educational surrogate parents; (9) due process hearings; (10) discipline; and (11) private school placement. A list of special education resources in North Dakota is provided. (CR)

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SPECIAL EDUCATION IN NORTH DAKOTA

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Children with Disabilities Under Section 504

Some children may have a disability that affects a major life activity that does not fit into one of the categories of disability under the Individuals with Disabilities Education Act (IDEA). These children may be protected by a different federal law — Section 504 of the Rehabilitation Act of 1973. The rights of "504 only" children and their parents are in some ways similar and in some ways different from the procedural safeguards described in this booklet. For more information about Section 504, contact your school district's Section 504 coordinator.

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Introduction

Children with disabilities and their parents are guaranteed certain educational rights, known as procedural safeguards, from ages 3 through 21. This booklet helps parents or guardians of these children make appropriate educational decisions on behalf of the child.

Following each main topic will be a section that explains your rights:

Δ *In Other Words...*

The Individuals with Disabilities Education Act (IDEA) is a federal special education law that requires school districts to provide a free appropriate public education (FAPE) to eligible children with disabilities. This free appropriate public education refers to special education and related services, described in an Individualized Education Program (IEP) and provided to the child in the least restrictive environment. The IDEA also includes the procedural safeguards in this booklet, which contains current federal regulations.

For more information

Whenever you need assistance, your first step is to contact your local school district. Talk to your child's classroom or special education teacher, the school principal, or the special education director for your school district. Other resources for concerns you may have are also listed at the end of this booklet.

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Acronyms:

DPI	Department of Public Instruction	IDEA	Individuals with Disabilities Education Act
FAPE	Free Appropriate Public Education	IEP	Individualized Education Program

Notice of Procedural Safeguards

This booklet is your notice of procedural safeguards, and must be given to you:

- the first time your child is referred for a special education evaluation;
- each time an individualized education program (IEP) meeting is scheduled for your child;
- each time your child is reevaluated;
- if you file a complaint or request a due process hearing;
- if the school district takes disciplinary action involving a change in placement of more than 10 days for your child;
- if the school district places your child in an interim alternative educational setting for up to 45 days for certain drug and weapons-related misconduct; or
- whenever you request a copy.

Parent Participation

Your participation is essential. You will be given opportunities to become actively involved in meetings about identification, evaluation, and educational placement of your child, as well as other matters related to your child's FAPE. This includes the right to participate in meetings to develop your child's IEP.

In Other Words... To ensure that your child receives a free appropriate public education, you have the right to be fully involved in decisions regarding your child.

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Prior Written Notice

As an active participant in the decision-making process, you have the right to prior written notice from the school district. The district must inform you in writing of important decisions regarding your child's special education, and you must be notified before those decisions are put into place.

These include decisions to:

- identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- evaluate or reevaluate your child;
- develop an IEP for your child, or change your child's IEP; or,
- place your child in special education services, or change your child's special education placement.

You also have the right to prior written notice from the school district when the district refuses your request to take these actions. Prior written notice must include:

- a description of the action proposed or refused by the school district;
- an explanation of why the action is proposed or refused;
- a description of any other options considered and the reasons why those options were rejected;
- a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
- a description of any other factors relevant to the action proposed or refused;
- notice that you can invite individuals with knowledge or special expertise about your child to an IEP meeting;
- a statement that parents of a child with a disability are protected by the procedural safeguards described in this booklet;
- a copy of this *Procedural Safeguards for Children and Parents in Special Education* booklet or how you can get a copy.

Prior written notice must also include resources you can contact for help in understanding these procedural safeguards, and a description of how you can file a complaint.

Prior written notice must be provided in your native language unless doing so is clearly not feasible.

In Other Words...

The school will notify you by letter if it proposes to change or refuses to change your child's services. The notice must be simple and easy to understand, and information about upcoming meetings must be sent to you sufficiently in advance to allow you to attend.

Parental Consent

The First Evaluation

The school district must have your informed written consent before it can evaluate your child, and must inform you about the assessments to be used with your child.

Reevaluation

The school district must have your informed written consent before reevaluating your child. However, your child may be reevaluated without your written consent if the school district can demonstrate it has taken reasonable steps to get your consent and you have not responded.

The school does not need to obtain your consent before reviewing existing data as part of an evaluation or reevaluation.

Initial Placement

You must give your informed written consent before the school district can initially place your child in a special education program or provide special education services to your child.

Refusal

You can refuse consent for an evaluation, a reevaluation, or the initial placement of your child in special education. If the school district believes this service is necessary for your child, it may seek to evaluate or place your child in special education services through a due process hearing. You and the school district may agree to try mediation to resolve your disagreements (for more information on mediation, see page 7).

In Other Words... Your written permission is required before your child is first evaluated, reevaluated or placed in special education services.

Records

You have the right to inspect and review all your child's education records:

- before any meeting about your child's IEP;
- before any due process hearing related to your child; and
- within five business days of your request.

Direct your requests to look at your child's records to the building principal or to your school district's special education director.

The Family Educational Rights and Privacy Act (FERPA) and IDEA ensure that you have access to your child's educational records. Your school district has a more detailed written policy about school records, and any parent can request to see this policy. If you disagree with items in your child's records, you can ask that they be changed or removed.

In Other Words... You have the right to see or request copies of your child's school records.

Evaluation Procedures

A full, individual, appropriate evaluation of your child must be completed before any special education services begin or before your child is dismissed from services. You must be included in the team that does the evaluation.

Your child must be reevaluated at least once every three years. The team may decide no additional data are needed to determine whether your child continues to be eligible for special education. If so, the school district must notify you of that decision and the corresponding reasons. You still have the right to request an evaluation to determine whether your child continues to be eligible. The school district is not required to conduct the evaluation unless you request it.

An independent educational evaluation is an evaluation by a qualified examiner who is not an employee of the school district responsible for educating your child. You may ask for an independent educational evaluation at school district expense if you

disagree with an evaluation completed by the school district.

If the school district does not agree with you that an independent evaluation is necessary, it may request a due process hearing. The school district will not have to pay for an independent evaluation if the hearing is concluded in the district's favor. You may still get an independent educational evaluation at your own expense.

School districts must maintain a list of public and private agencies that meet the district's criteria to conduct independent educational evaluations. The district's criteria will indicate acceptable qualifications of an examiner and location. This list is available to you, and you can request it from your school district's special education director.

The results of independent educational evaluations must be considered by the school district before taking further action regarding your child. These evaluations may be considered evidence in a due process hearing. A hearing officer may also require an independent educational evaluation of your child at school district expense during due process hearing proceedings.

In Other Words... You are a part of the team that evaluates your child. At least every three years, this team must consider whether any additional evaluation is needed. If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone other than the school staff.

Least Restrictive Environment

Every effort must be made to provide the necessary supports that will allow your child to be educated in your neighborhood school. Access to the general education curriculum must be given to your child. As much as possible, your child must be educated with children who do not have disabilities.

In Other Words... The least restrictive environment is the setting where your child can receive an appropriate education as close as possible to your home.

Educational Surrogate Parents

When a natural parent or guardian of a child is unknown or unavailable, or if the child is a ward of the state, the school district must assign an individual to act as this child's parental substitute or educational surrogate parent. The surrogate, who has all the procedural rights of a parent, is responsible for representing the child's interests in all matters related to the provision of a FAPE.

In Other Words... Sometimes a natural parent or guardian of a child is unknown or unavailable. When that happens, an educational surrogate parent is appointed by the school to represent the child at school meetings.

If you have concerns...

IDEA recognizes that parents and schools occasionally disagree and provides several options to help solve these problems. If you have concerns about your child's special education services, first talk to your child's general or special education teacher, the building principal, superintendent, or the district's special education director.

Don't let your concerns accumulate. When a problem first arises, act immediately so steps can be taken as soon as possible to support the working relationship among the staff, your child and you. If your concerns are not resolved, you may want to consider mediation, a written complaint to the North Dakota Department of Public Instruction (DPI) Office of Special Education and/or requesting a due process hearing.

Mediation:

You may ask the school district to try mediation. Mediation is voluntary and confidential, and both parents and staff must agree to proceed before a mediator is appointed. Mediators, who are not employees of the school district, are trained in strategies to help people reach agreement over difficult issues. The ND DPI covers costs related to special education mediation.

You can obtain a copy of the DPI Office of Special Education's mediation brochure and/or complaints brochure by calling 701-328-2277 or by contacting your local special education director.

Written Complaint:

If you believe a school district has violated the IDEA, you may file a written complaint with the DPI. This complaint must describe the problem(s), include your name and contact information, and give specific facts about the problem(s). Your complaint should be sent to:

Director of Special Education
ND Department of Public Instruction - Department 201
600 East Boulevard Avenue, 10th Floor
Bismarck, ND 58505-0440

The DPI must investigate your written complaint and send a written decision within 60 days. This timeline may be extended under certain circumstances.

In Other Words... Sometimes you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting mediation, which is a free service conducted by a trained impartial professional not employed by the school district. However, at any time you may file a written formal complaint and or request a due process hearing. To receive a mediation and or complaints brochure, or to obtain the form for requesting a due process hearing, call DPI at 701-328-2277.

Due Process Hearing

A due process hearing, which is a formal, legal proceeding, can be requested by parents or by the school district.

If you disagree with the identification, evaluation, educational placement or other aspects relating to your child's FAPE, you can request a due process hearing by contacting the State Director of Special Education at DPI.

A model form for requesting a due process hearing is available from DPI's Office of Special Education by calling 701-328-2277.

Your hearing request must include:

- your child's name and address and the name of the school that your child is attending;
- a description of the problem, including specific facts about the problem; and
- any suggestions you have for solving the problem.

The school district may request a hearing if you refuse consent for evaluation or placement, or to demonstrate that the district has conducted an appropriate evaluation and/or offered a FAPE.

An impartial hearing officer will conduct the hearing. A hearing must be completed and final order issued within 45 days of DPI's receipt of the request unless the hearing officer grants an extension at the request of a party.

A party to a hearing has certain rights, including:

- the right to bring an attorney who can give you advice;
- the right to bring one or more individuals who have knowledge or training about children with disabilities;
- the right to present evidence and confront, cross-examine, and require witnesses to be present;
- the right to a written, or, at the option of the parents, an electronic verbatim record of the hearing; and,
- the right to written, or, at the option of the parents, electronic findings of fact and decisions.

Disclosure of Evidence Before Hearing

At least five business days before a hearing, school districts and parents must disclose to each other all evaluations of the student completed by that date as well as recommendations based on those evaluations that they intend to use at the hearing.

A hearing officer may bar any party that fails to comply with this rule from introducing the undisclosed evaluations or recommendations at the hearing without the consent of the other party.

Child's Placement During Proceedings

During the process of hearing and appeal, your child will remain in the current educational placement. This "stay put" rule applies unless:

- you and the school district agree to another placement;
- your child is applying for initial admission to a public school and you consent to your child's placement in the public school program; or
- your child is removed to an interim alternative educational setting by school personnel or a hearing officer.

Attorney Fees

A court may award reasonable attorney fees to the parents of a child with a disability if the hearing officer rules in the parent's favor. Under certain circumstances, attorney fees may be reduced or denied.

In Other Words... If you cannot resolve a conflict with your school district, you have the right to a due process hearing conducted by an impartial person.

Discipline

There may be instances when your child's behavior requires the school to use special methods of discipline. Depending on the nature of the behavior, you have the right to be a part of team decisions about disciplinary action.

Short Term Removals

Short term removal from your child's normal educational setting may be up to 10 consecutive school days at one time. Additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct are allowed. However, if a series of short term removals become a pattern, they are considered a change of placement and the requirements for longer removals must be followed. School personnel may use short term removals to the same extent these options would be used with children who do not have disabilities.

Longer Removals

Longer removals include expulsion and suspensions that add up to more than 10 days in a school year. School districts can not take this kind of action for misconduct related to or caused by the student's disability. If a longer removal is being considered, the district must have an IEP meeting, with you and other qualified personnel included in that meeting, to make a "manifestation determination". This meeting must be held within 10 business days of the school district's decision concerning the disciplinary action.

Manifestation Determination

You will be invited to participate as a member of the IEP team, which will determine whether the misconduct is a manifestation of your child's disability. The IEP team may determine that the behavior was not a manifestation if the IEP team:

- reviews all relevant information including:
  - ✓ test results, and any independent educational evaluations;
  - ✓ information provided by the parents;
  - ✓ observations of the child; and,
  - ✓ the child's IEP and placement;

- and determines that, in light of the misconduct:
  - ✓ your child's IEP and placement were appropriate;
  - ✓ the special education services, supplementary aids and services, and behavior intervention strategies were provided as described on your child's IEP;
  - ✓ your child's disability did not impair the ability to understand the impact and consequences of the misconduct; and,
  - ✓ your child's disability did not impair the ability to control the misconduct.

If the IEP team concludes that the misconduct was not a manifestation of your child's disability:

- the school district may take disciplinary action, such as expulsion, in the same manner as it would for children without disabilities;
- if an expulsion hearing is required, the school district must make sure that the special education and disciplinary records of your child are provided to the expulsion hearing officer; and,
- the school district must continue to provide a FAPE to your child consistent with the child's individual needs.

Drug And Weapon-Related Misconduct

School personnel may move a child to an interim alternative educational setting for 45 days if:

- the child carries a weapon to school or to a school function; or,
- the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or
- the interim alternative educational setting meets the requirements described below.

Removal By A Hearing Officer

A hearing officer may move a child to an interim alternative educational setting if:

- the child would be substantially likely to cause injury to himself or herself or others in the current placement; and
- the school has made reasonable efforts to minimize the risk of harm in the current placement.

Extensions of 45-day removals by a hearing officer may be repeated, if necessary, when returning the child to the current placement would be dangerous.

Interim Alternative Educational Setting

If you disagree with the IEP team's decision, you can request an expedited due process hearing.

Any interim alternative educational setting must:

- allow your child to continue to participate in the general curriculum, although in a different setting;
- allow your child to continue to receive services and modifications, including those described in your child's IEP, to enable your child to meet IEP goals; and
- include services and modifications designed to address your child's behavior.

You must be a part of the IEP team that determines the specific interim alternative educational setting.

In Other Words... Discipline is an important factor in learning. The IEP team, which includes you, needs to determine appropriate disciplinary procedures for students with disabilities.

Private School Placement

If you enroll your child in a private school your child may receive some publicly funded special education services. You are entitled to reimbursement for costs associated with the private school placement *only* if a court or hearing officer determines that the school had not made a free appropriate public education available to your child.

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an evaluation upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district and gave notice of your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- at the most recent IEP meeting you attended before removing your child from the public school, or
- in writing to the school district at least 10 business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- illiteracy and inability to write in English;
- giving notice would likely result in physical or serious emotional harm to the child;
- the school prevented you from giving notice; or
- you had not received a copy of *Procedural Safeguards in Special Education for Children and Parents* or otherwise been informed of this notice requirement.

In Other Words... If you place your child in a private school without the school's endorsement, you could be awarded reimbursement for private school educational costs only if a court or hearing officer determines that the local school was not providing a free appropriate public education.

Other Resources

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provisions of the IDEA.

Your local school district _____

Pathfinder Family Center
Minot 701-837-7500
Toll Free 1-800-245-5840
Website .....http://www.ndcd.org/pathfinder
FAX 701-837-7548

National Information Center for Children and Youth with Disabilities (NICHCY)
Toll Free 1-800-695-0285
Website.....http://www.nichcy.org/

North Dakota Protection & Advocacy (P & A) Project
Bismarck.....701-328-2950
Toll Free 1-800-472-2670

North Dakota Department of Public Instruction - Office of Special Education
Bismarck.....701-328-2277
TDD 701-328-4920
Website.....http://www.dpi.state.nd.us/

The IDEA Advisory Committee meets several times each school year. This representative group of parents, administrators, university personnel, general and special educators makes recommendations about special education in North Dakota. Information about the advisory committee and its meeting schedule are available from DPI's Office of Special Education by calling (701) 328-2277.